

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL B. CHLADEK and
MARIE CHLADEK

v.

DAVID MILLIGAN, et al.

: CIVIL ACTION
:
:
:
:
: NO. 97-0355

MEMORANDUM AND ORDER

HUTTON, J.

June 22, 1998

Presently before this Court are the Defendants' Motion in Limine Regarding Expert and Lay Testimony Concerning Plaintiff Michael Chladek's Medical Condition and the Causal Relationship Between His Condition and the Actions of the Defendants (Docket No. 61) and the Defendants' In Limine Motion Regarding Plaintiffs' Claim for Punitive Damages (Docket No. 62). For the reasons set forth below, the defendants' Motions are **DENIED**.

I. BACKGROUND

The plaintiffs have alleged the following facts. On the morning of September 17, 1996, plaintiff Michael Chladek heard "banging at [the] front door" of his home. Pls.' Am. Compl. ¶ 25. Michael Chladek proceeded towards the door, where he saw several officers standing on the porch. Id. Plaintiff Marie Chladek opened the foyer door, and several officers forced their way into the plaintiffs' house. Id. ¶ 44. Michael Chladek then heard a "crashing noise at the back door," and "proceeded to the rear of

his home where he viewed several more [officers] break in his back door." Id. ¶ 25.

David Milligan, Donna Henry, David M. Dettinburn, John E. Founds, Thomas J. Micek, and two unknown persons, all state parole agents (collectively referred to as "state parole agents"), entered the plaintiffs' "house and struck, punched, hit and wrestled Michael Chladek to the floor." Id. ¶ 26. The state parole agents handcuffed Michael Chladek's hands behind his back and took him into custody. Id. ¶¶ 26-27.

After he was handcuffed, the state parol agents "pulled . . . Chladek to his knees and began a vicious assault upon him, beating him about his body, legs, arms and back with a club and/or other instruments." Id. ¶ 28. The state parole agents dragged Chladek out of his home through the front door. Id. ¶ 29. Once outside, the state parole agents continued to "beat . . . Michael Chladek on his back, chest, arms, legs, and about his body with their clubs and other instruments and knocked [Michael Chladek] against an automobile." Id. ¶ 33. Michael Chladek suffered vast bodily injuries from the attack. Id. ¶ 28.

Marie Chladek witnessed the attack, until the state parole officers struck, pushed and grabbed her, forcing her into "a small space" inside the house. Id. ¶ 46. The state parole agents held Marie Chladek in that space "without allowing her to move." Id.

Although Michael Chladek informed the state parole officers that he was injured, Michael Chladek's "plea for medical attention" was ignored. Id. ¶ 35. The state parole agents transported Michael Chladek to the divisional headquarters of the Pennsylvania Board of Probation and Parole. Id. ¶ 36.

Once Michael Chladek arrived at the divisional headquarters, a state parole officer placed Michael Chladek "in a holding cell for approximately [seven] hours." Id. ¶ 37. Again, Michael Chladek's requests for medical attention were ignored. Id. Moreover, after Michael Chladek was transferred to the Pennsylvania State Correctional Institution at Graterford ("Graterford Prison"), he received inadequate medical attention. Id. ¶ 38.

The plaintiffs filed the instant suit on January 16, 1997.¹ The plaintiffs' remaining claims can be divided into two

1. In their Amended Complaint, the plaintiffs named the following parties as defendants: (1) the Commonwealth of Pennsylvania; (2) the Pennsylvania Board of Probation and Parole (the "Board"); (3) State Parole Agent David Milligan ("Milligan"); (4) State Parole Agent Donna Henry ("Henry"); (5) State Parole Agent David M. Dettinburn ("Dettinburn"); (6) State Parole Agent John E. Founds ("Founds"); (7) State Parole Agent Thomas J. Micek ("Micek"); (8) two unknown state parole agents; (9) the Pennsylvania Department of Corrections; (10) Prisoner Commissioner Martin Horn ("Horn"); (11) Deputy Prison Commissioner for Central Region Jeffrey Beard ("Beard"); (12) Superintendent Donald Vaughn ("Vaughn"); and (13) four unknown Graterford Prison guards. The plaintiffs alleged that the defendants' conduct violated Sections 1983, 1985(3), 1986, and 1988, under the First, Fourth, Eighth and Fourteenth Amendments. Moreover, the plaintiffs asserted claims for Assault and Battery (Count VI), Malicious Abuse of Process (Count VII), False Arrest (Count VIII), False Imprisonment (Count IX), and Intentional Infliction of Emotional Distress (Count X).

On July 21, 1997, this Court granted the Uncontested Motion of Defendants Commonwealth of Pennsylvania, Pennsylvania Department of Corrections, Horn, Beard and Vaughn to Dismiss the Plaintiffs' Amended Complaint. On January 28, 1998, this Court dismissed all claims against Defendant Pennsylvania Board of Probation and Parole. Moreover, the Court dismissed all claims against Defendants Milligan, Henry, Dettinburn, Founds,

(continued...)

categories: (1) claims against Defendants Milligan, Henry, Dettinburn, Founds, Micek and David Knorr ("Knorr") in their personal capacities based on 42 U.S.C. § 1983; and (2) pendent state law claims against Defendants Milligan, Henry, Dettinburn, Founds, Micek and Knorr. On May 21, 1998, the defendants filed the present motions.

II. DISCUSSION

A. Plaintiff Michael Chladek's Medical Condition

1. Plaintiff's Testimony Regarding His Injuries

In the defendants' Motion in Limine Regarding Expert and Lay Testimony, the defendants seek to preclude Michael Chladek "from offering any testimony addressing either the nature and extent of any physical or mental injuries that he had in or around the time of his arrest or the cause of any such injuries." Defs.' Mot. in Lim. Regarding Expert and Lay Testimony at 4. The defendants argue that the plaintiff is not a medical expert and has no personal knowledge regarding these issues that could be helpful to the jury.

A witness may offer opinion evidence under Rule 701 or Rule 702 of the Federal Rules of Evidence. Under Rule 702, a qualified expert may testify in the form of an opinion in certain

(...continued)
and Knorr in their official capacities and all claims against Defendants Milligan, Henry, Dettinburn, Founds, and Knorr based on 42 U.S.C. §§ 1985 and 1986.

instances. See Indian Coffee Corp. v. Procter & Gamble Co., 752 F.2d 891, 899 (3d Cir.), cert. denied, Folger Coffee Co. v. Indian Coffee Corp., 474 U.S. 863 (1985) (discussing the qualifications necessary for an expert and lay opinion). Michael Chladek does not purport to be an expert in the field of medicine or any other domain that would allow him to testify as a medical expert in this case.

Instead, Michael Chladek offers his testimony concerning damages under the confines of Rule 701 of the Federal Rules of Evidence. Rule 701 states as follows:

If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.

Fed. R. Evid. 701. Thus, a lay witness may only testify in the form of an opinion where the testimony is "based upon personal knowledge or observation, in accordance with Rule 602, and [it would] be helpful to understanding the witness's testimony or determining a fact in issue." Charles E. Wagner, Federal Rules of Evidence Case Law Commentary 502 (1996-97) (footnotes omitted). Moreover, "[w]hile lay witnesses are not allowed to speculate, they may offer testimony regarding terms or matters which are prominent enough in the layman's environment that a familiarity with respect to the subject area would exist." Id. at 503 (footnotes omitted);

see Eckert v. Aliquippa & S. R.R. Co., 828 F.2d 183, 185 n.5 (3d Cir. 1987) (noting plaintiff's ability to testify as to causation of accident by virtue of his thirty years experience and full familiarity with railroad procedures).

In the Plaintiffs' Response to Defendants' Motion in Limine Regarding Expert and Lay Opinion Testimony, the plaintiffs state:

Michael Chladek was viciously beaten by the State Parole Agents who are defendants in this action. He perceived the effects of this vicious beating firsthand. As a result of his firsthand experiences, the testimony Michael Chladek can offer regarding this vicious beating is rationally based upon his own perception. Additionally, testimony from Michael Chladek relating to how the agents beat him and how he felt afterward will be extremely helpful in assisting the jury to formulate a clear understanding as to just how vicious the beating by the parole agents actually was. Specialized knowledge is not required for lay opinion Michael Chladek has more than a reasonable basis grounded in experience to testify as to the mental and physical injuries he suffered as a result of the vicious beating the State Parole Agents subjected him to. To deny him the opportunity to testify as a lay witness would contravene Federal Rule of Evidence 701.

Pls.' Resp. to Defs.' Mot. in Lim. Regarding Expert and Lay Opinion Testimony at 2.

According to the plaintiffs' response, the majority of Michael Chladek's proposed testimony concerns his factual account of the events at issue. He wishes to offer his version of the alleged attack and the pain he suffered subsequently. Rule 701

does not apply to this testimony, because Michael Chladek seeks to offer his description of the facts, not his lay opinion. See Hurd v. Williams, 755 F.2d 306, 308 (3d Cir. 1985) (discussing testimony as to fact, as opposed to opinion).

To the extent that Michael Chladek offers his opinion with regard to the extent and the causation of his injuries, that opinion is permissible under Rule 701, so long as it is based on his first-hand knowledge and observation and is helpful to the jury. Bushman v. Halm, 798 F.2d 651, 660 (3d Cir. 1986) (finding lay witness was permitted to give opinion as to pain and causation). If at trial Michael Chladek offers testimony that is broader than these parameters permit, the defendants are invited to renew their objection. Accordingly, the Court denies the defendants' Motion in Limine Regarding Expert and Lay Testimony with regard to Michael Chladek's proposed testimony.

2. Expert Testimony Regarding Plaintiff's Injuries

The defendants seek to exclude all of the plaintiffs' expert testimony, pursuant to Rule 37(c) of the Federal Rules of Civil Procedure. The defendants argue that they never received any disclosures regarding expert witnesses as required under Federal Rules of Civil Procedure 26(a)(2)(B) and 26(e)(1). Thus, the defendants contend that the Court should sanction the plaintiffs by prohibiting the plaintiffs from offering expert testimony.

The automatic disclosure provisions governed by Federal Rule of Civil Procedure 26 require the disclosure of expert reports. The purpose behind "requiring expert reports is 'the elimination of unfair surprise to the opposing party and the conservation of resources.'" Reed v. Binder, 165 F.R.D. 424, 429 (D.N.J. 1996) (quoting Sylla-Sawdon v. Uniroyal Goodrich Tire Co., 47 F.3d 277, 284 (8th Cir.), cert. denied, 516 U.S. 822 (1995)).

Federal Rule of Civil Procedure 37(c)(1) controls where a party fails to comply with Rule 26(a) or 26(e)(1). It states:

A party that without substantial justification fails to disclose information required by Rule 26(a) or 26(e)(1) shall not, unless such failure is harmless, be permitted to use as evidence at trial . . . any witness or information not disclosed. In addition to or in lieu of this sanction, the court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions.

Fed. R. Civ. P. 37(c)(1).

The imposition of sanctions under Rule 37(c)(1) is within the discretion of the trial court. Newman v. GHS Osteopathic, Inc., 60 F.3d 153, 156 (3d Cir. 1995). However, "[t]he exclusion of critical evidence is an extreme sanction, not normally imposed absent a showing of willful deception or flagrant disregard of a court order by the proponent of the evidence.'" In re Paoli R.R. Yard PCB Litig., 35 F.3d 717, 791-92 (3d Cir. 1994), cert. denied, 513 U.S. 1190 (1995) (quoting Meyers v. Pennypack Woods Home Ownership Ass'n, 559 F.2d 894, 905 (3d Cir. 1977), overruled on

other grounds, Goodman v. Lukens Steel Co., 777 F.2d 113 (3d Cir. 1985), aff'd, 482 U.S. 656 (1987)).

When determining whether to exclude expert testimony under Rule 37(c), a court must consider:

(1) the prejudice or surprise in fact of the party against whom the excluded witnesses would have testified, (2) the ability of that party to cure the prejudice, (3) the extent to which waiver of the rule against calling unlisted witnesses would disrupt the orderly and efficient trial of the case or other cases of the court, and (4) the bad faith or willfulness in failing to comply with the district court's order.

Meyers, 559 F.2d at 904-905. "[S]anctions should not be imposed if substantial justification exists for the failure to disclose, or if the failure to disclose was harmless." Newman, 60 F.3d at 156. Moreover, "[t]he importance of the excluded testimony is an important final consideration." Gibson v. National R.R. Passenger Corp., 176 F.R.D. 190, 192 (E.D. Pa. 1997) (citing Meyers, 559 F.2d at 905); see also Tunis Brothers Co., Inc. v. Ford Motor Co., 124 F.R.D. 95, 97-98 (E.D. Pa. 1989) (discussing 37(c) considerations).

In the instant action, these considerations weigh against the defendants' request that the plaintiffs be prohibited from presenting expert testimony. First, the plaintiffs explain that their failure to timely disclose the names of their experts was justified, because of the defendants' own failure to provide discovery concerning the alleged attack. Pls.' Resp. to Defs.'

Mot. in Lim. Regarding Expert and Lay Opinion Testimony at 2-3. The plaintiffs contend that the defendants' delay caused the plaintiffs' delay, because the plaintiffs were unable to retain experts before reviewing the discovery materials disclosed by the defendants. Id. at 3. Accordingly, the plaintiffs assert that their delay was excusable.

Second, the prejudice to the defendants is minimal. According to this Court's Scheduling Order of November 26, 1997, the plaintiffs were required to disclose all expert testimony by June 1, 1998. Although the plaintiffs failed to do so, the delay has been minimal. Moreover, because the instant action has not yet been listed for trial, the defendants still have adequate time to prepare for the medical expert's testimony. Thus, this Court finds that the defendants have not been unduly prejudiced or unfairly surprised by the plaintiffs' delayed production of their expert reports.

Third, this Court cannot make a finding that the plaintiffs acted willfully and in bad faith. Although the plaintiffs admit that they failed to follow the Court's scheduling order, they have provided a reasonable excuse for their actions.

Finally, the plaintiffs' expert testimony is clearly essential to the success of their case. The plaintiffs seek to recover damages arising from the alleged attack, and without the proposed medical evidence, the plaintiffs would suffer significant

problems advancing this evidence to the jury. Accordingly, the defendants' Motion in Limine Regarding Expert and Lay Testimony is denied with regard to the plaintiffs' expert testimony.

B. Punitive Damages

In their second Motion in Limine, the defendants argue that the plaintiffs' claim for punitive damages must be stricken. More specifically, the defendants contend that the plaintiffs' "allegations fall short of the threshold that would support an award of punitive damages, as a matter of law." Defs.' Mot. in Lim. Regarding Pls.' Claim for Pun. Dam. at 2.

1. Section 1983

The United States Supreme Court has held that punitive damages are available in § 1983 actions "when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." Smith v. Wade, 461 U.S. 30, 56 (1983). Furthermore, "this threshold applies even when the underlying standard of liability for compensatory damages is one of recklessness." Id.

In this case, the only Section 1983 claims remaining are those against defendants Milligan, Henry, Dettinburn, Founds, Knorr, and Micek, as well as those against two unknown state parole agents. The plaintiffs are entitled to recover punitive damages

from these defendants, if they can demonstrate that the defendants were callously indifferent to the plaintiffs' constitutional rights.

In their Amended Complaint, the plaintiffs allege that the defendants "vicious[ly]" assaulted Michael Chladek with a club, even after he was handcuffed, and then refused to provide adequate medical care. Pls.' Am. Compl. ¶¶ 26-29, 33. Moreover, the plaintiffs assert that the defendants violently attacked Marie Chladek, Michael Chladek's "aged mother," without reason or provocation. Pls.' Am. Compl. ¶¶ 46, 49; Pls.' Resp. to Defs.' Mot. in Lim. Regarding Pls.' Claim for Pun. Dam. at 2. The plaintiffs allege that the defendants acted recklessly and without provocation. Taking these allegations as true, a reasonable jury could find that the defendants were callously indifferent to the plaintiffs' constitutional rights. Accordingly, the Court denies the defendants' Motion in Limine Regarding Plaintiffs' Claim for Punitive Damages, with regard to the plaintiffs' request for punitive damages under Section 1983.

2. State Law Claims

The defendants further contend that the plaintiffs have failed to allege facts sufficient to support an award of punitive damages with respect to the plaintiffs' state law claims. Accordingly, the defendants move to strike the plaintiffs' request for punitive damages with respect to those counts.

The Supreme Court of Pennsylvania:

has embraced the guideline of Section 908(2) of the Restatement (Second) of Torts regarding the imposition of punitive damages: "Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others." See Chambers v. Montgomery, 411 Pa. 339, 192 A.2d 355 (1963). Punitive damages must be based on conduct which is "'malicious,' 'wanton,' 'reckless,' 'willful,' or 'oppressive'" Id. at 344-45, 192 A.2d at 358, citing Hughes v. Babcock, 349 Pa. 475, 37 A.2d 551 (1944).

Further, one must look to the "act itself together with all the circumstances including the motive of the wrongdoers and the relations between the parties" Chambers v. Montgomery, 411 Pa. at 345, 192 A.2d at 358 (1963). See also, Pittsburgh Outdoor Advertising Co. v. Virginia Manor Apartments Inc., 436 Pa. 350, 260 A.2d 801 (1970).

Feld v. Merriam, 485 A.2d 742, 747-748 (Pa. 1984).

Focusing on the same allegations discussed in the previous section, this Court finds that the plaintiffs have pled facts that are sufficient to substantiate their request for punitive damages with respect to their state law claims. The plaintiffs have alleged that the defendants acted viciously and without justification. Based on these allegations, a jury could reasonably find that the defendants acted maliciously, recklessly, and wilfully. Accordingly, the Court denies the defendants' motion with regard to the plaintiffs' request for punitive damages pursuant to the plaintiffs' state law claims.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL B. CHLADEK and	:	CIVIL ACTION
MARIE CHLADEK	:	
	:	
v.	:	
	:	
DAVID MILLIGAN, et al.	:	NO. 97-0355

O R D E R

AND NOW, this 22nd day of June, 1998, upon consideration of the Defendants' Motion in Limine Regarding Expert and Lay Testimony Concerning Plaintiff Michael Chladek's Medical Condition and the Causal Relationship Between His Condition and the Actions of the Defendants (Docket No. 61) and the Defendants' In Limine Motion Regarding Plaintiffs' Claim for Punitive Damages (Docket No. 62), IT IS HEREBY ORDERED that the defendants' Motions are **DENIED**.

BY THE COURT:

HERBERT J. HUTTON, J.